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In the

Supreme Court of the United States

SALIM AHMED HAMDAN,
PETITIONER
v.
ROBERT GATES, ET AL.,
RESPONDENTS

On Petition for Writ of Certiorari Before Judgment to the United States Court of Appeals for the District of Columbia Circuit

PETITIONER'S REPLY BRIEF

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ARGUMENT

Salim Hamdan's petition explains why his habeas challenge to the jurisdiction of a new military commission under the Military Commissions Act ("MCA"), Pub. L. No. 109-366, § 7(b), 120 Stat. 2600, presents questions "of such imperative public importance as to justify deviation from normal appellate practice," S. Ct. R. 11, and is the necessary and proper companion to cases already before this Court. Rather than deal with these arguments, Respondents devote much of their opposition to mischaracterizing Petitioner's challenge as one to his "det[ention] as an enemy combatant." Br. Opp. 11-12. Relying on this mischaracterization, Respondents then assert that the issues raised by Hamdan are merely duplicative of those raised by *Boumediene v. Bush*, No. 06-1195, and *Al Odah v. United States*, No. 06-1196 ("*Boumediene*") and that this case should be left to the D.C. Circuit to resolve.[1]

But Respondents offer no convincing reason why this case, which this Court has already heard once in establishing a precedent relevant to the cases now before this Court, should be denied review. Nothing in the rules or case law prohibits a second petition for certiorari before judgment.[2] This Court's grant of certiorari in *Boumediene* is a significant intervening development. And this case will not alter this Court's timetable for hearing *Boumediene*, since Petitioner has proposed a briefing and argument schedule that mirrors *Boumediene*.

No purpose is served by yet more delay. The Solicitor General acknowledges as much by arguing that *Boumediene* "might well resolve the additional constitutional claims asserted by petitioner." Br. Opp. 14. If so, there is little downside, and significant potential upside, to having a concrete case before this Court to help resolve those issues. Review is particularly appropriate since Hamdan's case not only presents the distinct

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[1] It is unclear what Respondents believe is left for the D.C. Circuit to resolve in Hamdan's case. If it raises issues merely duplicative of those presented by *Boumediene*, as Respondents assert, then the D.C. Circuit's decision in those cases is fully determinative of Hamdan's case as well.

[2] Of course, even were certiorari before judgment and rehearing both inappropriate, the Court could simply treat this as a Petition for an Extraordinary Writ, as the Petition itself noted. Pet. 1 & n.1. Respondents' brief in opposition does not challenge this mechanism, which is entirely available.

question whether habeas is available to challenge the MCA *commission* process, but also raises on behalf of all detainees objections to the MCA that are narrower in scope than the Suspension Clause challenge in *Boumediene*.

Critically, if this Court were to rule against the *Boumediene* detainees by finding that Congress' CSRT review provisions adequately substitute for habeas, that decision would leave unanswered Hamdan's argument that habeas is available to allow challenges to the separate commission process. *Compare* MCA § 7(a) (attempting to strip habeas for enemy combatants) *and* Detainee Treatment Act of 2005 ("DTA"), Pub. L. No. 109-148, 119 Stat. 2680, § 1005(e)(2) (providing for limited review of detention decisions) *with* MCA § 3 (attempting to strip habeas for commission challenges and providing circumscribed review). Alternatively, if this Court were to hold that the *Boumediene* detainees are protected by the constitutional right of habeas because the CSRT review provisions offer an inadequate substitute, the Court's ruling would not resolve whether Hamdan is similarly protected. No inquiry into the adequacy of MCA § 3 review can take place in *Boumediene* without this case.

1. Respondents argue that this is a successive petition that should be rejected on that basis alone. Br. Opp. 9. The argument lacks a basis in the rules or decisions of this Court, and Respondents tellingly cite to no authority. In fact, a plain reading of the rules compels the opposite conclusion. Rule 11 contains no prohibition on consecutive petitions, and its governing statute provides that petitions may be filed "at *any* time before judgment." 28 U.S.C. § 2101(e) (emphasis added). Rule 11 stands in marked contrast with rules such as Rule 44.4, governing petitions for rehearing, which explicitly prohibits "consecutive petitions."[3]

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[3] There is no merit in Respondents' suggestion that allowing this successive petition would somehow make it easier to obtain review before judgment than by the ordinary course of review after judgment. Br. Opp. 9. However many petitions are filed, the heightened standard remains in place: whether they present issues "of such imperative public importance as to justify deviation from normal appellate practice." S. Ct. R. 11. In allowing successive petitions, Rule 11 recognizes the obvious fact that circumstances can change before judgment, possibly justifying certiorari at multiple points in time, in a way they cannot change after judgment. Further, if this case meets the standard for certiorari before judgment, by definition it justifies departure from "normal appellate

Furthermore, the Clerk's Office was required to review this Petition, and if the Clerk believed it improper, it would have been rejected. Finally, the obvious change in circumstance warranting a further Petition is that this Court has taken the extremely unusual steps to grant rehearing in *Boumediene* and to set oral argument.

2. Respondents' principal claim, that this case is duplicative, Br. Opp. 10-12, is in serious tension with what they say next: that this case raises novel issues not appropriate for review at this time, Br. Opp. 13-16. It is also in tension with the Solicitor General's filings in past cases.[4] In fact, this case presents a crucial counterpart to *Boumediene* without which this Court's inquiry into the MCA's attempted habeas stripping will be incomplete.[5]

a. To reach the conclusion that these cases present duplicative questions, Respondents disregard that Hamdan challenges his commission. Pet. 9-10. While the *Boumediene* petitioners argue that their right to challenge their detention and the related CSRT process is protected both by statutes and by the Constitution,

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practice," including Respondents' asserted policy against successive petitions.

[4] The Government has, in fact, regularly sought certiorari before judgment in order to bring closely related cases raising similar issues before this Court. For example, it sought certiorari in both No. 04-104, *U.S. v. Booker*, and No. 04-105, *U.S. v. Fanfan*. Far from suggesting that "duplicative" review was inappropriate, the Government asserted that this duplication highlighted the need for certiorari before judgment. U.S. Cert. Pet. Before Judgment, *Fanfan*, 543 U.S. 220 (2005), at 7-8 ("*The government's petition for certiorari in* Booker *presents the same questions that are presented here*... In this case, unlike *Booker*, the court of appeals has not yet reviewed the judgment." (emphasis added)). Indeed, the Government cited the very cases Mr. Hamdan relies upon here. *Id.* at 9 ("In addition to *Gratz*, the Court has granted certiorari before judgment in other cases where cases presenting similar issues had already been accepted for review. *See, e.g., Taylor v. McElroy*, 358 U.S. 918 (1958); *Bolling v. Sharpe*, 344 U.S. 873 (1952); *Porter v. Dicken*, 328 U.S. 252, 254 (1946)."). *See also* U.S. Cert. Pet. Reply, *Ashcroft v. Seneca-Cayuga Tribe*, 540 U.S. 1218 (2004) (No. 03-740), at 10 (seeking certiorari because "if the certiorari petition is granted in *Santee Sioux* [No. 03-740], essentially the same question will already be before the Court."); U.S. Cert. Pet., *Demore v. Kim*, 538 U.S. 510 (2003) (No. 01-1491), at 19 ("review is warranted in both *Radoncic* [No. 01-1459] and this case, to better ensure a definitive resolution.... in a wider range of applications"); U.S. Cert. Pet., *INS v. Orlando Ventura*, 537 U.S. 12 (2002) (No. 02-29), at 10 (seeking grant in case with "the same legal issue" as No. 02-25, *INS v. Chen*).

[5] This Court has accepted such claims from private litigants. *E.g.*, Pet. Cert. Before Judgment, *Gratz v. Bollinger*, 539 U.S. 244 (2003) (No. 02-516), at 15.

Hamdan presents the other half of that question: whether statutes and the Constitution protect those facing commission trial.[6] Together these cases occupy the field of challenges that may be brought to the MCA's habeas-stripping provisions, and to cover that field this Court should consider the cases together.

b. Respondents' assertion that this case presents the same issue as *Boumediene* because the MCA "makes no distinction between aliens detained as enemy combatants and those who are also subject to trial by military commission" also falls flat. Br. Opp. 11. The relevant distinction is not the identity of the respective petitioners but the nature of the government action each challenges. MCA § 7(a) does not distinguish between commission and detention challenges, but other provisions do. DTA § 1005(e)(2) provides for exclusive and limited judicial review of final CSRT determinations of the propriety of detention in the D.C. Circuit. By contrast, MCA § 3 provides for limited review of final determinations of commissions. While the two provisions both provide for strictly circumscribed review in the D.C. Circuit, they are not identical;[7] each presents distinct and complicated questions as to the scope and nature of the attendant review—a natural conclusion given the recognized differences between administrative detention and criminal prosecution.[8]

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[6] At the Founding, a touchstone of habeas was the right to contest an illegal trial before the trial took place. *E.g.*, *United States v. Villato*, 28 F. Cas. 377 (C.C. D. Pa. 1797) (granting habeas to alien charged with high treason for helping capture an American ship); *United States v. Burr*, 25 F. Cas. 2 (C.C. D. Va. 1807) (describing how Burr's compatriots were charged with treason and released on habeas before trial); *cf. Ex parte Royall*, 117 U.S. 241, 248 (1886) (interpreting habeas statute to allow courts to review the constitutionality of statutes pre-trial). The 1679 Habeas Corpus Act itself granted relief for those accused of "high treason or felony." *See* Habeas Corpus Act of 1679, 31 Car. 2, c. 2, § 7.

[7] For example, DTA § 1005(e)(2) requires the D.C. Circuit to inquire into whether CSRT determinations are consistent with the Secretary of Defense's regulations. MCA § 3, in contrast, mandates that the D.C. Circuit ensure that commission determinations are consistent with the MCA itself.

[8] This is also demonstrated by the D.C. Circuit's recent decisions in *Bismullah v. Gates*, No. 06-1197 (D.C. Cir. July 20, 2007), and *Parhat v. Gates*, No. 06-1397 (D.C. Cir. July 20, 2007). Those cases set the standard for DTA § 1005(e)(2) review of CSRTs, rejecting the narrow approach urged by the Government and making plain that review of CSRT determinations under the DTA will proceed very differently from review of commission decisions under the MCA.

c. Finally, Respondents disagree that certiorari is necessary here because, in its absence, the Government could evade a defeat in *Boumediene* by simply charging detainees before commissions. Br. Opp. 11. They assert that there is no reason to think that, in the wake of a holding in *Boumediene* that habeas is available to challenge detention at Guantanamo, such relief will not also be available to detainees (including Hamdan) slated for trials.

This misses the point. Even if detainees facing commissions may file habeas petitions challenging their detention in the future,[9] the government will almost certainly argue at that point that such a petition may not challenge *commissions*. And that argument could prove correct inasmuch as such challenges are not before this Court in *Boumediene*. Indeed, leaving aside the *Government*'s claim, the petitioners themselves in *Boumediene* have suggested repeatedly that those facing commissions may lack access to the Great Writ. *See* Pet. 11-12 (detailing examples). That substantial point of conflict between Hamdan and the *Boumediene* petitioners itself provides a significant reason to grant review.[10]

This is a point which seems wholly to escape Respondents, who assert that Hamdan's challenge to MCA § 3 will be dealt with in *Boumediene* simply because Hamdan used the phrase "[j]ust as with the *Boumediene* and *Al Odah* challenges." Br. Opp. 13 n.4. But, of course, the fact that DTA § 1005(e)(2) and MCA § 3 are inadequate substitutes does not imply that both are insufficient for the same reasons. Further, *Boumediene* cannot decide the sufficiency of MCA § 3 for the obvious reason that those petitioners are not challenging commissions.

While *Bismullah* and *Parhat* helpfully illustrate whether Congress has provided an adequate substitute for habeas with respect to CSRTs, a similar circuit court decision on MCA § 3 is wholly unnecessary. As argued fully in Hamdan's Petition, MCA § 3 is an inadequate substitute *on its face* because it delays review until a final commission decision, allows the Executive to avoid review altogether, does not allow independent judicial inquiry into conditions of confinement, seemingly precludes courts from considering treaty claims, and precludes review of the sufficiency of evidence. Pet. 21-23. These defects are all manifest in the statute as written; waiting additional months or years will not clarify them. This Court recognized as much when it rejected Respondents' claim that the DTA required post-trial review. *Hamdan*, 126 S. Ct. at 2770-72.

[9] Respondents have already sought to dismiss Hamdan's *entire case*, including his (unbriefed) challenge to his non-commission detention, due to the pendency of commission charges. *E.g.*, Tr. Oral Arg., *Hamdan v. Rumsfeld*, D.C. Cir. No. 04-5393, at 5 (argument of Asst. Atty. Gen. Keisler) ("we believe the proper course was for the District Court to dismiss the case on the basis of abstention").

[10] Moreover, detention and criminal trials are fundamentally different creatures

The Government could thus evade the spirit of habeas by reclassifying detainees as commission defendants (a step it has already admitted it plans on doing with 80 current detainees) and further delay resolution of the ultimate question of whether those defendants retain habeas to challenge the full range of government action against them. By hearing this case, this Court can fully determine the rights of detainees regardless of the Government's shifting classifications and guarantee speedy resolution of any resulting habeas petitions in accordance with law.[11]

3. Respondents also assert that Petitioner's constitutional challenges to the MCA are "secondary" and can be decided in *Boumediene*. Br. Opp. 13. Nothing could be further from the truth. The *Boumediene* petitioners do not raise separation of powers, bill of attainder, or equal protection challenges to the MCA. *See* Pet., *Boumediene* at i (questions presented); Pet., *Al Odah* at i (same).[12]

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and there is no reason why this Court's holdings on one should apply with equal force to the other. This Court has repeatedly recognized the differences between detention and military trial. *Hamdan*, 126 S. Ct. at 2798 ("Hamdan does not challenge, and we do not today address, the Government's power to detain him"); *id.* at 2817 (Scalia, J., dissenting) ("The vast majority of pending petitions, no doubt, do not relate to military commissions at all, but to more commonly challenged aspects of 'detention'"); *Boumediene*, 476 F.3d at 1005 & n.9 (Rogers, J., dissenting); *In re Guantanamo Detainee Cases*, 355 F. Supp. 2d 443, 447 n.7 (D.D.C. 2005), *rev'd by Boumediene*, 476 F.3d 981; *see also Hamdi v Rumsfeld*, 542 U.S. 507, 593 (2004) (Thomas, J., dissenting) (drawing a "punishment-nonpunishment distinction"); Amicus Br. of Military Attorneys Assigned to the Office of Military Commissions, *Al Odah*, No. 03-343, at 5-7.

[11] Respondents also assert that there is no reason to hold this petition pending *Boumediene*. At a minimum, a hold would be the ordinary course, even without a showing of irreparable harm. Moreover, unless this Court affirms the D.C. Circuit's *Boumediene* holding that the Constitution does not apply at Guantanamo, no lower court will be able simply to apply this Court's decision in *Boumediene* to Hamdan's case. By reviewing this concrete case, this Court can provide clear guidance about how its holdings bear on commission challenges.

[12] Respondents assert that this case would be a poor vehicle because those challenges have not been fully adjudicated below. Of course, the vast majority of these claims have been briefed once, on the merits, in No. 05-184, and each was raised below. Pet. App. 15a-16a n.16. Further, this contention is disingenuous because the Government simultaneously contends in the proceedings below that *Boumediene* is binding precedent so that those in Hamdan's position possess *no* constitutional rights. Additionally, these claims present pure questions of law perfectly suited for determination by this Court. Respondents even argue, albeit incorrectly, that this Court *will* resolve them in *Boumediene*. Br. Opp. 13-14.

Petitioner contends that, in stripping jurisdiction and directing that no Geneva Convention rights can be invoked by commission defendants, the MCA violates separation of powers by preventing implementation of this Court's ruling in *Hamdan* that "there is at least one provision of the Geneva Conventions that applies here"—Common Article 3. 126 S. Ct. at 2794. Respondents ignore this legislative encroachment upon the judicial function (whereby the MCA dictates a "rule of decision" for pending cases, violating principles in *United States v. Klein*, 80 U.S. 128 (1871), and *Plaut v. Spendthrift Farms*, 514 U.S. 211 (1995)). Instead, Respondents misleadingly parse *Hamdan* to suggest that this Court denied enforcement of treaty rights. Br. Opp. 14. That gloss not only misstates *Hamdan*'s holding (which, after all, struck down his commission "because its structure and procedures violate both the UCMJ and the Geneva Conventions," 126 S. Ct. at 2759), it also completely sidesteps the separation of powers problem with the MCA, i.e., that "Congress may not declare by retroactive legislation that the law applicable *to that very case* was something other than what the courts said it was." *Plaut*, 514 U.S. at 227.

Respondents' equal protection argument is similarly weak. They argue that the MCA does not impinge on a fundamental right because the statute provides an "adequate" substitute. Br. Opp. 15. Respondents are incorrect. *See* Pet. 21-23 (setting forth the myriad reasons why MCA § 3 is not an adequate substitute). Further, habeas is "the very essence of constitutional liberty." *Coolidge v. New Hampshire*, 403 U.S. 443, 454 n.4 (1971). Respondents' claim that federal alienage classifications only warrant rational basis review is also misguided. *Mathews v. Diaz*, 426 U.S. 67 (1976), the sole case they cite, applied such review only for doling out scarce government benefits. *Id.* at 78-79. *Mathews* made clear that the Fifth Amendment protects aliens "from deprivation of life,

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Tellingly, Respondents' opposition omits the facts that two months ago they asked the D.C. Circuit to summarily affirm the district court and also opposed initial en banc in this case – hardly actions by litigants who extol the virtues of percolation. Br. Opp. 15. Respondents' newfound respect for percolation is simply inconsistent with the fact that they have sought to preclude it at every juncture. Now, after six years and after this case has already been decided once by this Court, this Court should hear this case – and should do so before the next round of trials takes place. The eyes of the world will be watching those trials, and the impression the trials leave cannot be erased.

liberty, or property without due process" even when the alien's presence is "unlawful, involuntary, or transitory." *Id.* at 77.[13]

4. Respondents contend that "petitioner does not even allege ...irreparable harm." Br. Opp. 12. This is not the relevant standard (as is plain from the other cases where certiorari before judgment has been granted) and is flatly incorrect. *See* Pet. 8, 21-22; Mo. Expedite 14-15 & n.8. In fact, Respondents fail to address those allegations, no doubt because they cannot credibly deny them.

As this Court has recognized, "Hamdan and the Government both have a compelling interest in knowing *in advance* whether Hamdan may be tried by a military commission that arguably is without any basis in law."[14] Hamdan's interest is in not being tried by a commission that lacks jurisdiction over him personally and over the alleged offenses preferred against him on an ex post facto basis.[15] The situation is directly analogous to the protection against Double Jeopardy: "the constitutional protection...would be irreparably lost if Petitioners were forced to endure the second trial before seeking to vindicate their constitutional rights." *Gilliam v. Foster*, 75 F.3d 881, 904 (4th Cir. 1996) (en banc) (citing *Abney v. United States*, 431 U.S. 651, 660 (1977)). A commission trial will irreversibly preview Hamdan's defense and trial strategy, a compelled disclosure that unquestionably

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[13] Respondents claim that the MCA is not an Attainder because it does not apply to easily ascertainable individuals. Br. Opp. 14. But they elsewhere admit that the MCA applies to precisely such an easily ascertainable group–specifically those "aliens determined by administrative processes to be enemy combatants or who are being held as enemy combatants while awaiting such determinations." *Id.* The open-ended nature of the MCA does not save it. *See Cummings v. Missouri*, 71 U.S. 277 (1867) (striking down a state constitutional provision barring anyone who failed to take an oath from certain forms of employment); *id.* at 323-24 (recounting an open-ended British attainder aimed at "comforters, abettors, partakers, confederates, or adherents unto the" Earl of Kildare). Likewise, Respondents' claim that the MCA does not work punishment conflicts with this Court's recognition that complete deprivation of access to the courts is "punishment." *See Pierce v. Carskadon*, 83 U.S. 234, 237-39 (1872).

[14] *Hamdan*, 126 S. Ct. at 2772 (emphasis added). If this Court ultimately decides that the position it rejected last year, abstention, is now appropriate, it can make such a decision after full briefing and argument. Since over three years have elapsed from Hamdan's indictment with no trial, the case for abstention is weak.

[15] Indeed, a plurality of this Court has held that one of those charges, conspiracy, is not a violation of the law of war. *Hamdan*, 126 S. Ct. at 2785.

"prejudice[s] the position of [P]etitioner[]." *Boumediene*, 549 U.S. –, slip. op. at 2 (statement of Stevens, J., and Kennedy, J.).[16]

Finally, Petitioner will be irreparably harmed by having to defend himself in a trial in which no one—neither judge, nor prosecution, nor defense—knows whether the Constitution governs the proceedings, constrains the prosecution, or protects the defendant in any way. Pet. 8 n.5. Petitioner is unable to develop a defense strategy under such uncertainty. These rights will be impossible for courts to vindicate fully ex post.[17]

The Great Writ's longstanding function has been to avoid such perils by allowing pretrial challenges to the jurisdiction of special criminal courts, particularly military tribunals. Habeas was "provided for in the most ample manner" in the Constitution as a bulwark against "arbitrary methods of *prosecuting* pretended offenses." *The Federalist* No. 83 (Hamilton) (emphasis added).[18]

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[16] *See Rafeedie v INS*, 880 F.2d 506, 517 (D.C. Cir. 1989) ("irreparable injury" results if litigant forced to put on defense in a proceeding he believes unlawful).

[17] The Government's brief is notable for what it does *not* say. It does not say that the Government will suspend Hamdan's commission—or trials for any of the 80 expected defendants—while this Court considers *Boumediene*. In fact, after this Court granted certiorari in *Rasul* in 2003, the Government accelerated commission proceedings. The "decision by the Supreme Court to hear a case challenging the detentions at Guantanamo prompted yet another push by the Pentagon to get the commissions going." Tim Golden, *Administration Officials Split Over Stalled Military Tribunals*, N.Y. Times, Oct. 25, 2004, at A1. Over the eight months preceding the Court's decision in *Rasul*, the Government assigned defense counsel to detainees, designated the appellate panel, issued new commission orders, and charged three detainees—none of which it had done in the preceding years. *See* Dep't of Def., News Release, http://www.defenselink.mil/releases/archive.aspx (Dec. 3, 2003; Dec. 18, 2003; Dec. 30, 2003; Feb. 6, 2004; Feb. 24, 2004; Mar. 3, 2004; May 18, 2004; June 10, 2004). On the day that *Rasul* was argued before this Court, the Government simultaneously issued a set of revised commission instructions and announced "key military commission officials." Press Release, Dep't of Def., Key Military Commission Officials Announced (Apr. 20, 2004), http://www.defenselink.mil/releases/release.aspx?releaseid=7278. And the day after *Rasul* was decided, the Government referred charges for detainees Al Bahlul, Al Qosi, and Hicks to commissions. Dep't of Def., Military Commission Charges Referred (June 29, 2004), http://www.defenselink.mil/releases/release.aspx?releaseid=7504.

[18] This Court has repeatedly held that a "basic purpos[e] underlying the writ of habeas corpus" is to "hel[p] guarantee the integrity of the criminal process by assuring that trials are fundamentally fair." *O'Neal v McAninch*, 513 U.S. 432, 442 (1995). Furthermore, "inquiry into the authority of the commission...may be

The Government also has a compelling interest in obtaining this Court's guidance on whether commissions are proceeding lawfully. Indeed, had this Court accepted Respondents' wait-and-see arguments under the abstention doctrine in No. 05-184, there may well have been scores of commission convictions that would have been overturned by this Court's ultimate ruling in *Hamdan v. Rumsfeld*. A grant of certiorari in this case could avoid such a fiasco in the future. Moreover, a vital national interest—our reputation as a people committed to equal justice under law and to fulfillment of our obligations under treaties—is at stake.[19] The recent plea of David Hicks has furthered such doubts.[20] Both the Secretary of Defense and Secretary of State have expressed opposition to commission trials at Guantanamo.[21] In light of these profound doubts, we would do well to recall the warning of Justice Rutledge: "It is not too early, it is never too early, for the nation steadfastly to follow its great constitutional traditions, none older or more universally protective against unbridled power than due process of law in the trial and punishment of men, that is, of all men, whether citizens, aliens, alien enemies or enemy belligerents. It can become too late." *Yamashita*, 327 U.S. at 41-42 (Rutledge, J., dissenting).

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari Before Judgment should be granted.

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made by habeas" on a pretrial basis. *In re Yamashita*, 327 U.S. 1, 8-9 (1946); *Ex parte Quirin*, 317 U.S. 1, 25 (1942). In *Quirin*, "in view of the public importance of the questions raised by th[e] petitions," this Court granted certiorari before judgment in an interlocutory commission challenge. 317 U.S. at 19-20.

[19] Much international condemnation surrounds the MCA military commission provisions. Many believe that the provisions violate this Court's Common Article 3 holding in *Hamdan* and other treaties. *E.g.*, Amicus Br. of 411 U.K. and E.U. Parliamentarians in Support of Petitioner, No. 07-15, at 13-15.

[20] Editorial, *Guantanamo Follies*, N.Y. Times, Apr. 6, 2007 at A18 (criticizing plea as "emblematic" of the "lawless nature" of Guantanamo); Editorial, *Spectacle at Guantanamo*, Wash. Post, Apr. 4, 2007 (plea shows commissions "politically twisted in a way that would be inconceivable in a credible court of law"); Editorial, *A Plea Tainted by Guantanamo*, Canberra Times, Mar. 29, 2007 (commission "highlights the willingness of the US Government . . . to sidestep the rule of law [and] ignore accepted conventions of human rights").

[21] Thom Shanker and David E. Sanger, *New to Pentagon, Gates Argued for Closing Guantanamo Prison*, N.Y. Times, Mar. 23, 2007 at A1.

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